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Report of the Special Rapporteur on the situation of human rights in Cambodia*

This addendum to the annual report (A/HRC/39/73) focuses on human rights issues leading up to and around the 2018 National Assembly elections. During the interactive dialogue at the Human Rights Council's thirty-sixth session, many States requested the Special Rapporteur pay particular attention to the human rights impact of the political situation ahead of the national elections. As the annual report to the Council was submitted before the election held on 29 July 2018, this addendum seeks to analyse the human rights situation in Cambodia during the electoral period, as well as the impact of the elections thereon.

This addendum includes information up to 15 August 2018, when the final results were announced. Many of the concerns related to legislation and individual cases have previously been raised with the Royal Government of Cambodia in communications. A draft of this addendum was shared with the Government on 20 August.

This addendum includes information on specific cases and alleged violations of human rights received by the Special Rapporteur. Some names and other personal identifying details have been withheld where divulging them may place the source at risk: details have only been included with the explicit informed oral consent of the source. Only information considered reliable and credible has been included. Where possible, information received has been corroborated by other sources[1]. Social media and online news sources have also been included as their use is particularly widespread in the Cambodian context and such media are commonly used to communicate statements by Cambodian authorities.

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I. The right to participation in international human rights law

1. Cambodia ratified the International Covenant on Civil and Political Rights (ICCPR) on 26 May 1992 and its third report is due to be submitted to the Human Rights Committee on 2 April 2019. Article 25 of the ICCPR recognizes and protects the right of every citizen – without discrimination or unreasonable restrictions – to take part in the conduct of public affairs; to vote and to be elected; and to have equal access to public services in the country. This lies at the core of democratic government based on the consent of the people[1] and is recognized in other international instruments.[2] It is an integral part of the 2030 Agenda for Sustainable Development, in particular Sustainable Development Goal 16.[3]

2. While article 25 forms the core of 'political rights' in international human rights law, it cannot be viewed in a vacuum. The realization of the right requires an enabling environment where other rights are respected. These include the rights to equality and non-discrimination and the right to education as well as the fundamental freedoms of opinion and expression, peaceful assembly, and association.[4]

3. Elections are a key feature of any democratic system. Article 25(b) ICCPR focusses on the rights to vote and to be elected in genuine periodic elections, by universal and equal suffrage and by secret ballot. No particular electoral system, that is a matter of national law and sovereignty, is prescribed but any election must guarantee the free expression of the will of the electors.[5] While States may lay down conditions or restrictions, these must be based on objective and reasonable criteria.[6] For example, the Human Rights Committee has pointed out that reasonable restrictions include a minimum age limit, but any restrictions on physical disability, or literacy, educational or property requirements would be unreasonable.[7] As only citizens are covered by Article 25, it follows that the provision of citizenship should not in itself be discriminatory.[8]

4. The notion of free expression of the elector's will is not limited to the time of casting the vote alone. For any election to be genuine, and guarantee the will of the voters, it must be conducted in a setting where human rights are enjoyed by all, particularly with respect to the rights to life, physical and mental integrity, liberty, security and privacy. Furthermore, to ensure a level playing field, freedom of opinion and expression, peaceful assembly, and association must be ensured. The Human Rights Committee has also noted the importance of "genuine competition" and called for a culture of political pluralism and pluralistic political debate.[9]

5. Elections must be conducted freely and fairly, with eligible voters free to vote for any candidate, without undue influence or coercion of any kind.[10] Where voting is not compulsory, this also includes abstaining from voting, or boycotting the election.[11] The free communication of information between citizens, candidates and elected representation is essential, implying an independent media operating without censorship or restraint.[12] Human rights defenders and an active civil society are often conducive to a genuine election, particularly as they also assist voters in forming independent opinions, often challenging those in power. Other necessary elements include an independent electoral authority – to ensure that the election is impartial and in accordance with domestic laws,

[1] CCPR General Comment no. 25, CCPR/C/Rev.1/Add.7.
[2] See e.g. CEDAW, articles 7 and 8; CRPD, articles 4(3), 29 and 33(3).
[3] See e.g. Targets 16.7 and 16.10 of SDG 16.
[4] CCPR General Comment no.34, CCPR/C/GC/34, para 4 and 20.
[5] CCPR/C/Rev.1/Add.7, para 21.
[6] CCPR/C/Rev.1/Add.7, para 4.
[7] CCPR/C/Rev.1/Add.7, para 10.
[8] CCPR/C/Rev.1/Add.7, para 3.
[9] For example, see CCPR/C/UZB/CO/4 (2015), Para 26.
[10] CCPR/C/Rev.1/Add.7, para 19.
[11] General Comment no. 34, CCPR/C/GC/34, para 28.
[12] CCPR/C/Rev.1/Add.7, para 25 ; see also E/CN.4/1998/40, para 24.

compatible with international human rights law – as well as independent scrutiny and judicial review.[13]

II. Elections from 1993 to 2013

6. Following the Paris peace agreements, Cambodia has held five elections for the National Assembly prior to the July 2018 elections (see graph 1, page 22). There have also been indirect elections to the Senate – the upper house of Parliament, as well as local elections for commune and district officials. While there has tended to be an overall improvement in the conduct of elections, the work of previous special procedure mandate holders demonstrates that many of their human rights concerns relating to elections and political participation unfortunately have not changed.

7. In particular, my predecessors have consistently noted various concerns around freedom of expression and intimidation of political activists and voters.[14] One highlighted that such restrictions and intimidation resulted in a chilling effect on freedom of expression in Cambodia, with many Cambodians exercising self-censorship in what they say and write, fearing arrest and detention if they express views critical of those in power.[15] In relation to the 2008 elections, moreover, OHCHR found that there was "an apparent campaign of pressure, threats, intimidation and inducements directed against political activists at every level in an attempt to persuade them to change parties."[16] The statement also noted deeply entrenched inequities among political parties in their access to, and control of, the media. In the 2013 elections, though largely peaceful at the pre-electoral stage, the Special Rapporteur noted that a campaign of intimidation and pressure still prevailed, particularly in rural areas.[17] The inability or unwillingness of the judiciary to respond appropriately to freedom of expression issues was also noted repeatedly,[18] raising concerns of politicized prosecutions[19] and independence of judiciary.[20]

8. Other recurring concerns raised by my predecessors have included the use of State resources, including the time of Government employees, vehicles and material and military, by political parties during their campaigning;[21] shortcomings of the National Assembly including protecting freedom of speech of parliamentarians,[22] and insufficient opportunity for opposition parliamentarians to effectively debate bills.[23] My predecessor also highlighted the practice of defamation and disinformation charges filed by or on behalf of the Government against members of opposition parties and other critics of public policies or practices.[24] Concerns around criminalizing insult and defamation have been raised as far back as 1994-5.[25] This remains problematic in terms of Article 19 ICCPR.[26]

9. Another significant concern which has been raised repeatedly is the discrimination against ethnic Vietnamese. In 1998, the then Special Representative of the Secretary-General documented concerns not only with registration – including that many were given ad-hoc language tests despite producing identification – but also discriminatory and provocative speech by opposition parties and politicians. The report noted that some

[13] CCPR/C/Rev.1/Add.7, para 20.
[14] A/50/681, Para 47; A/HRC/21/63, paras 33-34; A/HRC/18/46, paras 18-19.
[15] A/HRC/21/63 – paras 31, 55-57.
[16] https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/news/WebDOCs/2008/Statement_29072008E.pdf.
[17] A/HRC/24/36, para 35.
[18] A/HRC/18/46, 18-19; A/HRC/21/63, para 34.
[19] A/HRC/18/46, para 23 and A/HRC/24/36, para 44-45.
[20] A/HRC/15/46.
[21] A/HRC/21/63, para 52; A/HRC/24/36, para 38.
[22] A/HRC/18/46.
[23] A/HRC/15/46 Para 15; A/HRC/18/46.
[24] A/HRC/12/40, para 19.
[25] E/CN.4/1995/87, para 55 and A/50/681, para 45.
[26] CCPR/C/KHM/CO/2, para 21. Also CCPR General Comment n .34, CCPR/C/GC/34, para 38 and 47.

opposition politicians campaigned on a theme of ethnic hatred.[27] Similar racist and anti-Vietnamese rhetoric was used by representatives of several political parties during the 2003 election campaign. The Special Representative of the Secretary-General's 2003 report also noted harassment of Cambodians of Vietnamese descent on polling day and after.[28] Similar concerns were also noted with respect to the 2013 election.[29]

III. The 2013 national election and its aftermath

10. The 2013 election resulted in a win for the Cambodian People's Party (CPP) with 68 seats (48.83 per cent of popular vote) while the main opposition party, the then newly constituted Cambodia National Rescue Party (CNRP),[30] won all other 55 seats (44.46 per cent). There were however credible allegations of "massive electoral irregularities".[31] My predecessor expressed disappointment at the failure of the Government and the National Election Committee (NEC) "to facilitate [a] prompt, impartial, transparent, credible and thorough investigation of the alleged irregularities."[32] Nonetheless, a key shift in this election was the emerging evidence that an opposition party could seriously challenge the ruling party in Cambodia through peaceful means and even have the potential, eventually, to gain power.

11. The CNRP refused to take its seats in the National Assembly in protest at the claimed irregularities. These allegations, consistent with analyses by election observation groups and civil society groups, led to significant protests across the country.[33] One bystander was shot dead on 15 September[34] and another on 12 November, when security forces fired live ammunition after clashes with protestors in Phnom Penh.[35] The tension rose by the end of the year, when thousands of protesting workers joined the opposition protests and excessive use of force by security forces killed at least five demonstrators on 3 January 2014.[36] The next day, the Government banned all demonstrations, marches or rallies on public order and security grounds, including from Freedom Park: Phnom Penh's designated public demonstration site.[37]

12. A political agreement was reached between the Government and the CNRP in July 2014, which ended the CNRP demand for an independent investigation into the election and in return the Government committed to reform. As part of this 'culture of dialogue', the CNRP took up their seats in the National Assembly in August 2014. Subsequently, the NEC itself was reconstituted, with equal representation of both parties holding seats in the National Assembly and one independent member.[38]

13. Unfortunately, this culture of dialogue between the two main political parties did not last long. The political situation rapidly deteriorated. In July 2015, 11 CNRP members and supporters were convicted, and another three arrested in August, for leading or participating

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[27] A/53/400, paras 58-60.

[28] A/58/317, para 22.

[29] A/HRC/27/70, paras 52-3.

[30] Formed after the 2012 commune elections from a merger between the then Sam Rainsy Party and the then Human Rights Party.

[31] A/HRC/24/36 para 39-40.

[32] Oral statement at the HRC, September 2013, at https://cambodia.ohchr.org/~cambodiaohchr/sites/default/files/news/WebDOCs/2013/SR_Cambodia_statement_ENG.pdf.

[33] A/HRC/27/70, para 10; KHM 2/2013, https://spdb.ohchr.org/hrdb/24th/public_-_UA_Cambodia_27.09.13_(2.2013)_Pro.pdf.

[34] Oral statement at the HRC, Sep 2013, see FN 33; KHM 1/2013, https://spdb.ohchr.org/hrdb/24th/Public_-_UA_Cambodia_01.10.13_(1.2013)_Pro.pdf.

[35] https://newsarchive.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13995&LangID=E.

[36] A/HRC/27/70, para 13; KHM 2/2014, https://spdb.ohchr.org/hrdb/25th/Public_-_UA_Cambodia_28.02.14_(2.2014)_Pro.pdf.

[37] KHM 1/2014, https://spdb.ohchr.org/hrdb/25th/public_-_AL_Cambodia_17.02.14_(1.2014).pdf.

[38] Article 151, Constitution of Cambodia.

in an "insurrection" following a failed attempt a year before to reopen Phnom Penh's Freedom Park for demonstrations, in a protest that turned violent and left several security men injured.[39] Still in August, an opposition Senator was arrested without his parliamentary immunity being formally lifted.[40] In October 2015, two CNRP members of parliament were violently assaulted following what appeared to have been an organised protest of around 2,000 pro-government protestors outside the gate of the National Assembly: three men from the Prime Minister's bodyguard unit were subsequently convicted for the attack.[41] In November 2015, following the resurrection of historic charges and the issuance of an arrest warrant against him, Sam Rainsy remained abroad in self-imposed exile.[42] (A year later, he was effectively banned from coming back to his own country, following administrative instructions that were only lifted by the government shortly prior to the commune elections).[43] A related development was the introduction of the Law on Associations and Non-Governmental Organizations (LANGO), frequently criticized for its restriction on the work of independent bodies acting on human rights issues.[44]

14. More CNRP members had charges brought against them in 2016, including members of Parliament whose parliamentary immunity was most often not formally lifted. Charges of defamation or attempts to bribe a witness were lodged against CNRP leader Kem Sokha and members of civil society.[45] He refused to appear for questioning and was found guilty in September 2016.[46] Although he subsequently received a royal pardon and left his self-imposed house arrest, one CNRP member of the National Assembly and two pro-CNRP Senators were sentenced to 2.5 years (incitement), 7 years (forgery and incitement) and 18 months (defamation and incitement) respectively, for comments made on social media.[47] Um Sam An, the member of the National Assembly, remains in detention as of writing.

15. In March 2017, Parliament enacted amendments to the Law on Political Parties, following which anyone convicted to an unsuspended prison term, was prohibited from holding political office, while political parties could be dissolved for being secessionist or subversive.[48] This forced Sam Rainsy to step down as President of CNRP and several others to resign from the Steering Committee. OHCHR has raised concern about provisions of this law being inconsistent with Cambodia's international law obligations.[49] The law was further amended in July 2017 preventing any political party from associating with or using voice messages, images, written documents or activities of a person convicted of any crime. Penalties for doing so included a ban from political activities for up to five years, prohibition from involvement in elections or even dissolution of the party concerned.[50]

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[39] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23071.

[40] KHM 7/2015, https://spdb.ohchr.org/hrdb/32nd/public_-_UA_Cambodia_21.12.15_(7.2015).pdf.

[41] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=16795; KHM 6/2015, https://spdb.ohchr.org/hrdb/32nd/public_-_AL_Cambodia_03.12.15_(6.2015).pdf.

[42] KHM 7/2015, https://spdb.ohchr.org/hrdb/32nd/public_-_UA_Cambodia_21.12.15_(7.2015).pdf.

[43] KHM 7/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22853.

[44] A/HRC/33/62, Para 29; KHM 2/2015, https://spdb.ohchr.org/hrdb/30th/Public_-_OL_Cambodia_08.05.15_(2.2015).pdf; https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16240&LangID=E.

[45] A/HRC/33/62, para 7; KHM 3/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=19826.

[46] A/HRC/36/32, para 9.

[47] A/HRC/36/61, para 7.

[48] https://cambodia.ohchr.org/sites/default/files/A~alysis%20on%20the%20Amended%20Law%20on%20Political%20Parties%2028%2003%202017%20FINAL%20no%20TC.pdf.

[49] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22174.

[50] A/HRC/39/73, para 68.

570,000 USD much less 570, 000 Riel. He was charged with incitement to commit felony and insulting public officials, and eventually sentenced to one-year imprisonment and an 8 million Riel fine (USD2,000) on 23 March 2018.

27. Several ex-CNRP members – reportedly including half of the banned 118 senior members – fled the country before and following the Supreme Court decision, fearing arrest. 34-year-old Ms. Sour Sem, an ex-CNRP commune councillor from Pailin, fled abroad on 30 November 2017 after receiving a local court summons for alleged conspiracy of treason and espionage committed between June and October 2017. According to information received, she had been under pressure throughout November from officials at various levels of the administration to defect to the CPP and had even refused a formal request in writing received on 17 November 2017. An arrest warrant was issued against her on 29 December 2017, a copy which was shared with the Special Rapporteur.

28. Similarly, Oun Sreang, an ex-CNRP Province Executive Committee member in Oddar Meanchey, fled to Thailand on 18 November 2017 after a local court summoned him on 8 November. The summons related to his claim in August 2016 that the local authority was behind the shooting of a CNRP signboard – two years later, he was being investigated for public defamation and incitement to commit felony. The attempts to convince him to defect continued even after he fled. In late November, he reported contact on Facebook by an ex-CNRP commune chief, who had changed to CPP, who told him that if he came back and joined the CPP, the complaints could be resolved.

29. From September to November 2017, approximately 220 ex-CNRP leaders and members are reported to have fled to Thailand, where most are seeking refugee status. A further 50-60 members are reported to be living near the Thai-Cambodian border. The asylum seekers have been explicitly warned by Thai authorities that no political activity is permitted. Many of them have claimed surveillance and intimidation by Cambodian agents and Thai authorities, and fear being returned to Cambodia.

30. This fear of being forcibly returned is partly prompted by the case of Ms. Sam Sokha from Kampong Speu. In April 2017, she had posted a video on Facebook showing herself throwing a shoe at a CPP signboard featuring images of the Prime Minister and the National Assembly President and saying that they were destroying the nation. She was charged with insulting public officials and incitement to discriminate, and convicted in absentia in January 2018 to two years imprisonment and a fine of 5 million Riel (USD 1,250). Despite being accorded refugee status by UNHCR, she was extradited by Thai authorities on 8 February following a request by the Cambodian government. In addition to serving her sentence – for mere exercise of her right to freedom of expression – she is now undergoing another trial on allegations of incitement to discrimination in connection with statements allegedly made in Thailand.

31. Ex-CNRP members who remain in Cambodia report living in fear, unable to freely express their political opinions. For example, in May 2018, former vice-president of CNRP Pol Hom told a reporter that he wants to express his opinion on the current political issues but is forced to shut his mouth.[60] Ex-CNRP members and supporters also report continuing harassment and intimidation. In one such instance Ms. Sin Chanpeouroseth, an ex-CNRP commune chief in Ochar, Battambang, who now runs a restaurant, received online threats in January 2018 by a CPP lawmaker who claimed that the restaurant was a front for banned CNRP activity. She responded by putting a banner outside the shop saying that it was open to all, except rebels. However, the Battambang municipality told her to take it down. According to information received, she continues to receive occasional threats, including a late-night visit by unidentified men who verbally abused her in the week prior to the national election.

32. A number of other complaints have been received, including ex-CNRP supporters or their families being threatened or followed by apparent police officers. For example, the family of one leader in Oddar Meanchey refused the village chief's request to join the CPP.

[60] https://www.phnompenhpost.com/national-politics/ex-cnrp-deputy-pol-ham-breaks-silence-talks-safety-concerns.

Over the next two weeks, they received three midnight visits by unidentified persons who destroyed kitchen utensils and other property in their yard or defecated there. Not receiving much support from the police, and facing increasing threats from the midnight visitors, the family moved to another province in mid-July 2018.

33. Kem Sokha and Sam Rainsy have been variously summoned, accused or convicted in a range of cases, mostly on defamation and incitement charges.[61] On 29 January 2018, Sam Rainsy announced the new Cambodia National Rescue Movement. Within days, the Ministry of Interior instituted proceedings against Sam Rainsy and other leaders on grounds of incitement and creating chaos to overthrow the Government. At least three criminal cases have been filed against Sam Rainsy in the Phnom Penh courts between December 2017 and June 2018, relating to statements on Facebook. Mr Rainsy was also convicted in absentia in previous pending cases: on 6 March 2018 an Appeal court upheld the lower court verdict on public defamation with a 10 million Riel fine (USD 2,500) and 4 billion Riel (USD 1 million) compensation payable to the Prime Minister; on 26 February 2018 another court had ruled that his immovable property in Cambodia be confiscated in relation to claims from defamation cases brought by the Prime Minister and National Assembly President. Other criminal proceedings remain ongoing.

34. The restrictions that followed the 2017 local elections were not limited to the political parties alone, but extended to independent media, civil society groups and individuals who were deemed to represent a threat to the Government. In response to this, the spokespersons of the UN High Commissioner for Human Rights[62] and the UN Secretary General[63] raised concerns in August and December respectively.

(b) Civil society and human rights defenders

35. Even prior to the local elections, the atmosphere for dissent in Cambodia had been deteriorating, particularly with the arbitrary detention of the 'ADHOC 5' (four staff members of the Cambodian Human Rights and Development Association and a former staffer who had moved to a senior position in the NEC) in April 2016,[64] and the July 2016 murder of activist and analyst Kem Ley.[65] Another analyst – Kim Sok – was arrested and eventually sentenced to 18 months in prison for defamation and incitement pursuant to claiming that the CPP was responsible for the murder. Civil Society groups regularly faced harassment and intimidation, including many involved in the "black Monday" campaign highlighting the arrest of the 'ADHOC 5'.[66]

36. During the 2017 local elections, a group of over 40 organizations and associations joined together as the 'Situation Room' to monitor the pre-election environment as well as polling day. In the weeks following the election, the Prime Minister called for an investigation into the Situation Room. Following that, the two election-focused organisations leading the group – Committee for Free and Fair Elections in Cambodia (COMFREL) and the Neutral and Impartial Committee for Free and Fair Elections in Cambodia (NICFEC) – were notified that the Situation Room was not appropriately registered under the LANGO. In August 2017, the Special Rapporteur discussed with relevant government officials her view that as it was not an NGO, but rather a group of

[61] A/HRC/36/32, para 8.

[62] https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=21996.

[63] https://www.voacambodia.com/a/un-secretary-general-concerned-by-deteriorating-democratic-space-in-cambodia/4168302.html.

[64] KHM 3/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=19826; KHM 6/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=22837; KHM 1/2017, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23142.

[65] A/HRC/36/32, para 13; KHM 4/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3255.

[66] A/HRC/36/61, section IV.

registered NGOs pooling resources and acting together, the Situation Room had no distinct obligation under the LANGO.[67]

37. On 23 August, the National Democratic Institute (NDI) office in Cambodia became the first NGO shut down using the provisions of LANGO. While this was ostensibly due to non-registration, Government officials had repeatedly claimed that NDI had colluded with CNRP. On 31 October, the Federation of Cambodian Intellectuals and Students was temporarily suspended for 60 days based on infringement of LANGO's requirement of political neutrality, after their Director called, in an interview, for people to participate in a protest against CNRP's proposed dissolution.[68]

38. In late November, the Cambodian Center for Human Rights (CCHR) – a NGO initially founded by Kem Sokha in 2002 – was also investigated following a speech made by the Prime Minister in which he accused CCHR of being linked with the planned 'color revolution'.[69] Although CCHR was allowed to continue, a step in the right direction,[70] the threat to one of the most prominent human rights NGOs in the country appears to have contributed to a chilling effect, resulting in self-censorship by many organisations in Cambodia – all the more so as it followed administrative measures taken against others. In September, the Government had suspended the organization Equitable Cambodia for 30 days, and deregistered the environmental NGO Mother Nature. Two of its members were also arrested relating to filming suspected illegal sand-dredging activities.[71]

39. In early October, the Ministry of Interior issued an administrative instruction that went beyond the terms of LANGO, requiring NGOs and other associations to notify local authorities three days in advance of all activities.[72] This has directly affected day-to-day activities, particularly due to an increased police presence before and during activities or events. Not only did OHCHR note an increased number of reports of intimidation of civil society organizations, and resulting fear among their staff,[73] but its own activities were also affected by local authorities' application of the instruction.

(c) Media

40. In August 2017, the Government revoked or suspended the licences of at least 19 independent radio stations emitting across the country: most carrying programmes by CNRP, Voice of Democracy, Radio Free Asia (RFA) and Voice of America. The RFA office in Phnom Penh subsequently closed over licensing/ taxation issues. The Cambodia Daily – an independent English language daily newspaper – was also forced to close after receiving a tax-bill of some USD6.3 million.[74] Their new website, operated from abroad, is currently blocked by internet service providers in Cambodia.[75]

41. One of the last remaining independent media voices – the Phnom Penh Post – received tax demands of USD3.9 million. These were reportedly settled as part of the sale of the newspaper to a Malaysian investor in May 2018. According to information received, the Malaysian investor's directorship of the newspaper ended in early July and he has been replaced by the newly appointed CEO, a member of a CPP district working group. Two days after the initial sale, the Editor-in-Chief was fired following a dispute with the new owner over an article carried by the newspaper about the sale and possible links between

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[67] End of Mission Statement, 18 August 2017, https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22046&LangID=E.

[68] https://www.rfa.org/khmer/news/politics/A-youth-ngo-call-on-people-to-protest-against-ressolving-cnrp-10272017030538.html.

[69] https://cchrcambodia.org/media/files/press_release/679_212pcrifappafcthe_en.pdf.

[70] http://cambodia.ohchr.org/en/news/cambodia-un-special-rapporteur-calls-restoration-democracy-and-vibrant-civil-society.

[71] A/HRC/37/64, para 8. They were subsequently convicted and received one-year prison sentences, with seven months suspended.

[72] A/HRC/39/73, para 7.

[73] A/HRC/37/64, para 9.

[74] A/HRC/39/73, para 64; KHM 4/2017, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23326.

[75] https://www.cambodiadaily.com.

the new owner and the ruling party in Cambodia. More than a dozen national and international staff and reporters have resigned over concerns of editorial interference.

42. In September 2017, an Information Ministry spokesperson had threatened to jail RFA reporters if they continued to work in Cambodia.[76] Two months later, two former RFA reporters, Oun Chhin and Yeang Sothearin, were detained on grounds that they were sending news reports to RFA offices abroad. The men were eventually charged with espionage and remain in prison awaiting trial. In October 2017, two former Cambodia Daily journalists were charged with incitement to commit a felony over election-related coverage in May.

(d) Individual dissenters

43. There has also been continuing surveillance and repression of online activity critical of the Government.[77] A particular feature has been detention and trial of those deemed to have insulted the Prime Minister. For example, a 29-year-old man was arrested by armed military police officials in Kampong Cham in February 2018 after he reportedly called the government "authoritarian" on Facebook. Similarly, a 34-year-old migrant worker was arrested in Banteay Meanchey in March 2018 over alleged insults of the Prime Minister on Facebook. Ms. Hin Vansreypov was convicted in January 2018 to one-year imprisonment and a fine of one million Riel for incitement for making Facebook posts linking the Prime Minister with the murder of Kem Ley. The Special Rapporteur has received information of many such cases. Common features of the cases include arrests without warrant and charges of public insult/ defamation, sometimes with an additional charge of incitement.

44. As the Human Rights Committee has noted, "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties".[78] All public figures, including such as heads of state and government, are legitimately subject to criticism and political opposition. By the very nature of their role, public officials should withstand more extensive public criticism than ordinary citizens.

45. In March 2018 'Lèse Majesté' provisions were introduced in Cambodian law.[79] Calls by the CNRP to the King to intervene had been a frequent feature of the post 2013 elections political turmoil. His role was similarly invoked after the dissolution to the CNRP. With the new provisions, any speeches, gestures, writings, paintings or items that "affect the dignity" of the monarch are punishable by up to five years in prison and fines of up to 10 million Riel (USD 2,500). Organizations found guilty could be dissolved, placed under judicial supervision, banned from carrying out activities, closed down, or have their funds and property confiscated. Such provisions are incompatible with Cambodia's obligations under international human rights law, as they criminalize the legitimate exercise of freedom of speech.[80]

46. At least three persons have reportedly been arrested under these new provisions. In addition, Sam Rainsy was summoned by a Phnom Penh court in June 2018 after his Facebook post claiming that a letter written by the King calling on people to vote on polling day was either fake or issued under duress.[81]

47. Charges of incitement are also commonly used for offline activity deemed critical of the Government. In mid-November 2017, a 47-year-old farmer from Prey Veng was detained for distributing leaflets in Phnom Penh against the dissolution of the CNRP.

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[76] https://www.phnompenhpost.com/national/official-warns-ex-rfa-staffers-about-continuing-work-cambodia; https://www.voacambodia.com/a/cambodia-threatens-radio-free-asia-journalists-with-arrest/4035393.html.

[77] The same rights that people have offline must be protected online, including the right to privacy. General Assembly resolution A/RES/68/167 para 3. See also A/HRC/RES/38/7, para 1.

[78] CCPR/C/GC/34, Para 38.

[79] KHM 1/2018, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=23660.

[80] https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22674&LangID=E.

[81] https://www.khmertimeskh.com/50502935/sam-rainsy-summoned-for-insulting-the-king/

Another 44-year-old man was detained a few days earlier in Phnom Penh for distributing 'inciting' anti-Government and anti-Prime Minister pamphlets.

(e) Demonstrators

48. The January 2014 restrictions on freedom of assembly have not been officially lifted. My predecessor had regretted the failure of Cambodian authorities to understand that freedom of expression and peaceful protest was an inherent part of the democratisation process, which should be facilitated and not hindered.[82] The Special Rapporteur has previously noted that security forces commonly reject notification of assemblies and use roadblocks to prevent and block peaceful assemblies.[83] Such patterns appear to continue, particularly given the tension around CNRP's dissolution and fears of a 'color revolution'.

49. There is reliable information of instances of the police obstructing attempts at demonstrations or gatherings supporting CNRP. The authorities banned all assembly and protest on the day of Kem Sokha's trial on 31 October 2017 and all roads leading to the Supreme Court were blocked. In another instance, police in Koh Kong blocked a local vendor from going to Phnom Penh, to prevent him attending a demonstration supporting CNRP on 16 November 2017. Similarly, an ex-CNRP commune council member was summoned for questioning at police station in Battambang in February 2018 after he participated in a friends' charity event in the village: police accused him of organising a gathering without informing local authorities and claimed he was trying to create a movement to overthrow the government.

50. On 27 March, when Kem Sokha was due to appear at the Appeals Court for a hearing, security forces blocked and barricaded nearby streets to keep protestors away. Some ex-CNRP supporters were peacefully gathered near the barricade, and one of them drew chalk symbols on the street. A district security official slapped him, and the peaceful demonstration was dispersed. Concerns of 'color revolution' have meant that any political activity challenging the state remains under threat. On 27 October 2017, five members of the Khmer National Liberation Front (KNLF) were detained by police in Phnom Penh in connection with their plan to distribute leaflets calling on people to protest against the Government during the annual water festival. Even pro-CNRP Cambodian migrant workers protesting in the Republic of Korea were threatened by the Cambodian Ambassador with the risk of legal action on their return home.[84]

51. Information was also received of non-political demonstrations being obstructed in various ways. On 25 September 2017, the Cambodian Independent Teachers' Association notified the Phnom Penh municipality of their intent to gather 250 persons near Wat Phnom on 5 October 2017 – Teachers' Day – and march to the Ministry of Education and the Cabinet of the Prime Minister to submit petitions. A day before the event, they were informed that it was not permitted citing public safety, security and public order. Similarly, the Cambodian Labor Confederation's notification to mark Labour Day in 2018 with a march of about 2,000 workers was disallowed by the Phnom Penh municipality. They were only permitted to conduct a static event.

V. National Election 2018

52. The dissolution of the CNRP and the ban of 118 senior political actors from political activity last November raised serious questions about whether the 2018 national assembly elections could have been genuine.[85] Certain aspects of the run-up to the election are additional cause for concern, in particular the response to the calls for a boycott in a situation where voting is not compulsory, as well as reports of intimidation of voters and civil society organizations and controls of the media.

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[82] Oral statement at the HRC, Sep. 2013, cf. FN 33.

[83] A/HRC/36/61, para 46.

[84] https://bit.ly/2vNpYxl.

[85] https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23009&LangID=E; https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?LangID=E&NewsID=22406.

A. Reaction to the call for a boycott

53. On 8 April 2018, Sam Rainsy shared on his Facebook page, a video of an interview with RFA where he called on Cambodians who believed in democracy to boycott the 29 July 2018 elections if the CNRP was not allowed to participate.[86] He also called on national and international observers to refrain from 'observing' the elections. He repeated these calls.

54. On 4 May, the Prime Minister referred to boycott appeals as illegal, violating Article 142 of the Law on Members of National Assembly Election (LEMNA).[87] Similar statements were made by NEC leadership, including the spokesperson who linked boycott calls with incitement and creating unrest.[88]

55. On 2 May, following the release by Sam Rainsy of a leaflet online calling for a boycott, the Deputy Secretary General of NEC reiterated that not only would action be taken against Sam Rainsy, but also anybody who distributed the leaflet, whether in person or online.[89] After the Prime Minister warned against the sharing of the leaflet, on 7 May a spokesperson from the Ministry of Interior added that they would also target the printing houses where such leaflets were printed.[90]

56. On 8 May, the NEC Chair wrote to the Ministry of Interior asking for legal action on grounds that the boycott appeal was affecting public order and national security by obstructing eligible voters from casting their ballot, and causing confusion leading to the loss of trust in election.[91] The Deputy Prime Minister equated the appeals for a boycott with incitement or preventing citizens from going to vote as illegal acts.[92] Similarly, the Secretary General of the NEC told reporters that the campaign against the election was a crime.[93]

57. It is true that actions positively preventing eligible voters from voting is contrary to Cambodian law and violates international human rights. However, calls for boycotts of non-compulsory elections are permitted by international human rights law, as a form of protected expression. Although the right to freedom of expression can be restricted in certain circumstances, the Human Rights Committee has explicitly clarified that restrictions on calls for boycott of a non-compulsory vote are inconsistent with the right to freedom of expression as such restrictions impede political debate.[94] Encouraging voters to boycott an election should be distinguished from intimidation and coercion, and expressing one's intention not to vote does not affect the possibility of voters to freely decide whether or not to participate in a particular election.[95]

B. Intimidation and harassment of voters

58. The Special Rapporteur is concerned about reports of actions by Cambodian authorities affecting individual voters, particularly those considering abstaining from

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[86] https://www.facebook.com/ramsy.sam.5/videos/1790133781043347/?t=19.

[87] Facebook post on file, https://www.khmertimeskh.com/50486675/pm-call-for-election-boycott-illegal/.

[88] https://www.khmertimeskh.com/50303075/ramsy-wants-election-boycott-while-hun-sen-touts-peace/.

[89] https://www.phnompenhpost.com/national/election-body-threatens-legal-action-over-sam-rainsys-boycott-leaflets.

[90] https://www.phnompenhpost.com/national/hun-sen-warns-dispersing-election-boycott-leaflet.

[91] Letter no 474 (on file), https://www.khmertimeskh.com/50490768/nec-asks-interior-ministry-to-take-action-against-anyone-calling-for-a-poll-boycott/, https://khmer.voanews.com/a/cambodia-election-body-files-complaint-against-election-boycott-campaigners/4398605.html.

[92] https://www.rfa.org/english/news/cambodia/threats-05242018171039.html, https://www.phnompenhpost.com/national/interiors-sar-kheng-seeks-punish-those-calling-election-boycott.

[93] http://www.dailymail.co.uk/wires/afp/article-5961949/Cambodia-calls-campaign-boycott-election-crime.html.

[94] CCPR/C/GC/34, para 28.

[95] CCPR/C/81/D/927/2000, para 7.3.

voting. For example, the Governor of Ratanakkiri called upon provincial authorities to take action against individuals who incited people to boycott the election, linking this to maintenance of security and public order.[96] The Deputy Commissioner of National Police, also a member of CPP's central committee, instructed all members of the CPP to monitor their communities and report people telling others not to vote.[97] Media reports also quote village level officials as being under instruction to monitor voters in the village and ensure that they vote.[98]

59. Information from individual voters also suggested intimidation. For example, on 8 July 2018, Mr. Oum Savan, a teacher at Kampong Chhnang's Trapaignchan Secondary School and a former second deputy chief of Tnuk True commune, was reportedly detained on grounds of inciting people not to vote. A letter by some villagers alleged that Mr. Savan told 2 to 3 persons that they did not need to go to vote on polling day, but could stay at home. Even if they went to vote, no one could see them inside the polling booth and it was up to them if they wanted to mark the ballot or not. Media reports quoted the Kampong Chhnang Provincial Police Commissioner saying that Mr. Savan was released on 9 July, after he had promised to stop such activities.[99] Mr. Savan denies all allegations and claims that he merely said he would not go to vote on polling day.

60. In another instance in May, Mr. Kung Raiya, a 27-year student and former President of the Cambodia Student Network, who previously served an 18-month prison term for a Facebook post in 2015-2017,[100] posted messages on Facebook stating that he would absolutely not go to vote if he did not like any of the parties contesting the election.[101] He stated that going to vote or not is the right of every citizen, and that no person or political party can coerce or obstruct anyone from deciding whether to go to vote or not. He highlighted that there was no law punishing voters who do not vote and called on people not to be afraid to express their opinion. Although a resident of Phnom Penh, he was at his wife's family home in Siem Reap at the time of posting these messages. Soon after, a number of police officers reportedly gathered outside the family house. To avoid further pressure on the extended family, Mr. Raiya decided to return to Phnom Penh. The police followed him until he boarded the bus. Mr. Raiya has reportedly fled the country, but remains concerned about the safety of his family and his wife's family.

61. In early June 2018, an ex-CNRP supporter currently living abroad posted a message on Facebook saying that he would not vote. Over the next few days, police officers visited various family members of his who are living in Cambodia, and questioned them – either at their homes or at the police station – about his whereabouts. The family members have reported that police harassment is continuing even weeks later, with phone calls and police visits to their houses. The family is fearful of further harassment. In another instance, when a Facebook user said that he would not vote in the upcoming election, a Ministry of Interior spokesperson told the media that the authorities would fine the individual, and there might be more penalties as well as re-education.[102]

62. In addition to the above instances, reliable information has been received concerning other reported incidents of commune and village level authorities harassing and intimidating persons to ensure that they vote. In one such instance in Battambang, a CPP member filed a complaint with the commune election committee on 25 July against an ex-CNRP member for sharing the Facebook post showing a 'clean finger' photo. Two days

[96] https://www.khmertimeskh.com/50492839/curb-calls-not-to-vote-ratanakkiri-governor/.

[97] http://www.freshnewsasia.com/index.php/en/localnews/88587-2018-06-02-03-37-48.html.

[98] https://www.reuters.com/article/us-cambodia-election-threats/cambodias-rulers-cajole-and-coerce-voters-to-boost-election-turnout-idUSKBN1KF0LQ.

[99] http://www.freshnewsasia.com/index.php/en/localnews/92455-2018-07-10-07-16-19.html.

[100] KHM 1/2016, https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=13372.

[101] https://www.facebook.com/photo.php?fbid=1586059918186847&set=a.321587721300746.107; https://www.facebook.com/photo.php?fbid=1586838424775663&set=a.321587721300746.107.

[102] https://www.voacambodia.com/a/police-hunt-for-facebook-user-calling-for-election-boycott/4440774.html; https://www.phnompenhpost.com/national/police-warn-boycott-fb-group-involved-clean-fingers-campaign.

later, the village chief reportedly called the man's wife and told them to go vote to prevent her husband from being arrested. Claims of ten more instances where ex-CNRP members or supporters were effectively forced to flee their homes in July, due to threats or fear of arrest have been made. Some further instances were also reported in the media.[103]

63. Other reports have included officials making claims that voting was compulsory and that persons who did not vote would be imprisoned. Some instances have been covered by the media, including a report from Prek Russey commune in Stung Treng where villagers told journalists that local authorities had threatened to impose a fine of 300,000 and 350,000 Riel (USD 75 and USD 87) on non-voters.[104] There were reports of threats that local officials would make it more difficult for voters to obtain birth or death certificates and other local services if they did not vote for the ruling party, some of these reports were direct to the Special Rapporteur, others covered in the media.[105]

64. The extensive rhetoric on penalties highlighted above – including by the NEC – added to the existing climate of fear and uncertainty amongst voters. Some CPP senior officials went as far as to claim that those without ink-stained fingers at the end of the election would be easily identified as supporters of rebels or traitors.[106] Although in one speech the Prime Minister did say there would be no penalties for those who did not vote, he did so while threatening imprisonment for those who "cheated" and inked their own fingers after the election.[107] Instead of recognising the scale of fear that was leading Cambodians to consider inking their own fingers and avoid being penalised after the election, Government officials preferred to frame this as illegal activity exposing persons to risk of imprisonment.[108] Following the election, two teachers were convicted of theft for stealing an indelible-ink bottle from the polling centre where they were on duty. One reportedly told the court that she stole it for family members and colleagues at school to dye their fingers without casting ballots, as teachers were being told that their salaries would be cut if they did not vote.[109]

65. In light of these incidents and the statements made by representatives of the Cambodian authorities at all levels, it is relevant to recall that the Human Rights Committee has noted, "persons entitled to vote must be free to vote for any candidate for election and for or against any proposal submitted to referendum or plebiscite, and free to support or to oppose government, without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector's will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind."[110]

C. Legal action against individual voters

66. According to information received, on 19 July 2018 Mr. Chea Chiv, an ex-CNRP member in Battambang, invited some of his friends and former colleagues for a party at his house at Anlong Vil commune. Subsequently, Mr. Chiv posted on Facebook a group photo holding up their index fingers with the message: "our finger is really clean". Based on complaints reportedly filed by some CPP members, the Battambang Provincial Election Committee (PEC) found him and four others guilty of violating Article 142, LEMNA. The

[103] For example https://www.rfa.org/khmer/news/politics/cnrp-in-phnom-proek-flee-from-persecution-07302018091558.html; https://www.rfa.org/khmer/news/politics/released-cnrp-activists-after-questioning-07292018061837.html.

[104] https://www.rfa.org/khmer/news/politics/people-was-threatened-to-vote-07022018042055.html; https://www.reuters.com/article/us-cambodia-election-threats/cambodias-rulers-cajole-and-coerce-voters-to-boost-election-turnout-idUSKBN1KF0LQ.

[105] https://www.rfa.org/english/news/cambodia/threats-07172018164210.html.

[106] https://www.phnompenhpost.com/national/nonvote-vote-rebels-aids-authority-chief-slams-rainsys-call-boycott-national-elections.

[107] https://www.phnompenhpost.com/national/pm-dont-stain-election.

[108] http://www.freshnewsasia.com/index.php/en/localnews/88296-2018-05-30-02-00-55.html.

[109] https://www.khmertimeskh.com/50518185/teachers-convicted-for-stealing-election-ink/.

[110] CCPR/C/Rev.1/Add.7, para 19.

PEC concluded that their participation in the dissemination of the 'Clean Finger' campaign is contributing to causing confusion leading to loss of trust in the election, making eligible voters reluctant to go to vote, and is intended to prevent eligible voters from going to vote.[111] The five men were fined 10 Million Riel (USD 2,500) each. On appeal, the NEC upheld the fine of Mr. Chiv, but reduced the fine on two to 5 Million Riel (USD 1,250) and acquitted two others.[112] The case is reportedly under appeal at the NEC. The CPP deputy commune chief in Anlong Vil told journalists that he had also filed similar complaints against twenty other ex-CNRP officials.[113] On 25 July, a Ministry of Interior spokesperson said that between 30 and 40 complaints were filed against ex-CNRP supporters in Battambang and Kratie provinces alone.[114] The status of these complaints is not known.

67. In another instance, on 26 July the NEC announced that it was taking action against Mr. Choung Choungy, an ex-CNRP lawyer who had uploaded on Facebook a video in which he analyzed the law relating to a boycotting of voting and concluded that calling for a boycott did not violate any law.[115] The NEC found that his activities supported Mr. Sam Rainsy who has appealed for a boycott, leading to confusion and loss of trust in the electoral process. It is not known if any hearing was conducted or if Mr. Choung Choungy was able to present his defence. The NEC directed the Ministry of Interior, Ministry of Post and Telecommunication, and Ministry of Information to block social media accounts of Mr. Choung Choungy; the Ministry of Justice to review and take action against him as he was banned by Supreme Court from conducting political activities; and the Bar Association to review and take action with respect to his activities in interpreting the Constitution, Criminal Code, and Election law on Facebook. The Ministry of Justice is reported to have forwarded the matter to the Phnom Penh prosecutor for a decision on the steps forward.[116]

68. The application by the election committees of Article 142 of the Law on National Assembly elections in the context of the boycott calls raises serious concern. While most of the elements of Article 142 appear to penalise coercive acts, its broad interpretation appears to be aiding restrictions on the legitimate right of freedom of expression. Two particular provisions – creating confusion resulting in the loss of confidence in the election and creating loss of confidence in the secrecy of voting – appear overbroad and vaguely worded, inconsistent with the precision required by international human rights law.

69. The NEC reference to Mr. Choungy's presentation leading to confusion or trust in the electoral process raises questions at many levels. He uploaded a video providing a legal analysis, which differed with the opinion of the NEC and the Cambodian Government. Even if the opinion was false or flawed, it would be protected by freedom of expression. In this particular instance however, Mr. Choungy's interpretation of the law appears fully consistent with international human rights law. Not only has the NEC interpreted Cambodian law in a manner that violates Cambodia's obligations under international law, but it has further penalized a lawyer who has provided the correct legal interpretation.

D. Control of media, including social media

70. On 12 March 2018, the NEC issued a Code of Conduct for Media, part of a broader document: 'Regulations and Procedures for the Election of Members of the National Assembly in the 6th Legislature and the election laws". The Code of Conduct also includes a section on "Prohibitions for the Media" which include: broadcasting news leading to confusion and confidence loss in the election; expression of personal opinion in the ongoing events which are reported; publishing or broadcasting news that affects national security,

[111] Decision No. 001 dated 26 July 2018, Battambang Provincial Election Commission.

[112] https://www.necelect.org.kh/english/sites/default/files/images-attachment/EN_152.jpg. Upheld by the Constitutional Council on 15 August 2018, http://www.ccc.gov.kh/detail_info_kh.php?_txtID=921.

[113] https://www.khmertimeskh.com/50514898/poll-boycott-callers-pressured-to-apologise/.

[114] https://www.thmeythmey.com/?page=detail&id=67192.

[115] https://www.necelect.org.kh/khmer/content/3448.

[116] https://www.phnompenhpost.com/national/choungy-case-sent-nec-capital-courts.

political and social stability; and use of provocative or offensive language that may cause disorder or violence.[117]

71. The Code is similar to one issued by the NEC prior to the local elections in 2017 which led the Special Rapporteur to raise concerns.[118] In particular, the broad and imprecise terminology used could lead to sweeping restrictions on the media, incompatible with international standards.[119] Journalists have a responsibility to report on many issues in the run-up to an election, in particular controversial issues, and they should not face arbitrary restrictions. The Human Rights Committee has stated: "[i]n order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential."[120]

72. On 28 May 2018, the Ministries of Interior, Information, and Posts and Telecommunication adopted an Inter-ministerial Proclamation (*Prakas*) entitled 'Controls of Publication of Website and Social Media Processing via Internet'. The proclamation, made public on the Ministries' websites on 4 June, aims at controlling all online publications or news content sharing or written messages, audios, photos, videos, and/or other means intended to create turmoil, leading to undermine national defence, national security, relation with other countries, national economy, public order, discrimination and national culture and tradition. The three Ministries stated that they had established specialized units to cooperatively monitor, study, and research to enable legal action against illegal business activities and publications online.

73. For any law or regulation to be in accordance with applicable international standards, the provisions would need to be clearly elaborated, particularly terms such as 'national security', 'political and social stability' and 'turmoil' and 'national economy'. Some of the phrases in the proclamation are vague and overly-broadly framed, and do not comply with requirements under article 19(3), ICCPR. Such framing of provisions is not sufficiently precise to enable an individual to regulate his or her behaviour. Moreover, the issue arises whether the aims identified in the relevant provisions – such as preventing turmoil, the undermining of public order or political and social stability – do in fact justify such limitations on the freedom of expression. In this regard, the Human Rights Committee has established that, "the legitimate objective of safeguarding and indeed strengthening national unity under difficult political circumstances cannot be achieved by attempting to muzzle advocacy of multi-party democracy, democratic tenets and human rights".[121]

74. In order for elections to be genuine, robust and unfettered, public debate is crucial. Such debate depends on the free communication of ideas concerning public and political issues so that the public is fully informed of all points of view, even when such views might be opposing and even controversial. The use of information and communication technologies is an extremely important means for achieving this. Instead, this proclamation appears to confer a level of discretion on those enforcing them that would amount to an undue intrusion on the rights of targeted persons.

75. Government control and online surveillance is a significant chilling factor for freedom of expression in Cambodia. The Cambodian authorities blocked 17 popular websites from July 27 to 29, over the election period. The websites included Voice of America's Khmer service, Radio Free Asia's Khmer service, and local radio program Voice of Democracy. A senior official at the Ministry of Information claimed that the websites were selected as they were provocative and very political in their tendencies, focusing only on the election.[122]

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[117] https://www.necelect.org.kh/english/sites/default/files/EN-070.pdf.

[118] A/HRC/36/61, paras 61-62.

[119] https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23205&LangID=E.

[120] CCPR/C/Rev.1/Add.7, para 25.

[121] CCPR/C/GC/34, para 23.

[122] https://www.aljazeera.com/news/2018/07/cambodia-blocks-17-media-websites-vote-180728103300267.html.

E. Harassment of human rights defenders

76. The absence of the CNRP from the polls and the previous experience with the 'Situation Room' in 2017 also led most civil society groups to distance themselves from the 2018 elections. These included the three main election-monitoring organisations, COMFREL,[123] NICFEC,[124] and Transparency International,[125] who stated that they would not be conducting any election observation. COMFREL later clarified that its volunteers would monitor the human rights situation in the context of the elections.

77. On 5 July, a Facebook account posted a claim that COMFREL were using European Union funding and hiring ex-CNRP supporters to sabotage the election and cause chaos.[126] COMFREL denied the allegations in a statement, which also clarified that while they were not registering with the NEC nor deploying election observers as in previous elections, they would deploy 300 citizen observers throughout the country to monitor the exercise of voting rights by citizens, "including their uncoerced decision about 'going to poll' and 'not going to poll'".[127] The Special Rapporteur has received information indicating that intimidation of COMFREL and its volunteers increased soon after. There were at least 30 reported instances of volunteers being questioned or warned of arrest by local police. Trainings conducted by COMFREL for its volunteers became particular targets: five out of twelve were visited by police and military police – in Kampong Thom, Kampong Cham, Kampong Speu, Svay Rieng and Bantey Meanchey. One day before the election, the Kampong Cham Governor claimed that COMFREL was illegally recruiting observers.[128] Concerned about the security of their staff and volunteers, COMFREL decided to scale back its polling day monitoring.

78. Intimidation does not appear to have been limited to the volunteers alone. COMFREL staff were also warned of arrest in at least four provinces. In addition to regular surveillance by police and local authorities, COMFREL offices in five provinces also received 'friendly visits' from the police who wanted to know the details of their activities. According to COMFREL, the intimidation against their staff and volunteer 'citizen observers' was organized and systematic.

VI. Polling day and aftermath

79. Twenty parties registered for the 2018 National Assembly elections: a significant increase from the eight that had contested the previous 2013 elections. With the CNRP dissolved, the main opposition parties from that election were FUNCINPEC and the League for Democracy Party (LDP), which had gained 3.66 per cent and 1.03 per cent respectively of the popular vote in 2013. Four other of the twenty parties had won a combined 2.03% of the popular vote in 2013.[129] Six other parties had contested the 2017 local polls although not the 2013 national elections, of which only the Khmer National United Party won a commune chief position with 1.13% popular vote.[130] Five other parties won a combined

[123] https://www.rfa.org/english/news/cambodia/comfrel-vote-05152018163110.html; https://www.khmertimeskh.com/50514040/nec-to-process-more-observers/.

[124] https://www.phnompenhpost.com/national/nicfec-opts-not-observe-citing-fears-volunteers-election-watchdog-will-not-field-monitors.

[125] http://www.ticambodia.org/download/ti-cambodia-press-release-2018/?wpdmdl=2685&masterkey=5b29d4718d826.

[126] https://www.facebook.com/229595330754816/posts/635167700197575/.

[127] https://comfrel.org/wp-content/uploads/2018/07/741_Statement-on_-Denial-of-Allegation-on-COMFRELs-activities-in-2018-election_ENG-Final.pdf.

[128] http://www.freshnewsasia.com/index.php/en/localnews/94240-2018-07-28-11-22-22.html.

[129] Khmer Anti-Poverty Party (0.65%), Cambodian Nationality Party (0.58%), Khmer Economic Development Party (0.51%) and Republican Democratic Party (0.29%).

[130] Seven parties won commune councillor positions: CPP – 6503, CNRP – 5007, FUNCINPEC – 28, KNUP – 24, GDP – 5, LDP – 4, Beehive – 1.

popular vote-share of 0.57 per cent in 2017.[131] Six parties in the 2018 elections were completely new – registered after the 2017 local elections.[132] In comparison, the CNRP had won 44 per cent of the popular vote in 2013. In short, of the 19 opposition parties, none had any record of attracting a significant percentage of the popular vote in recent years and none came anywhere near the previous support of the former CNRP. It raises the question of whether there was really 'genuine competition' in the election, as stressed by the Human Rights Committee. It is also striking that in Cambodia's first election of the modern era in 1993, twenty parties, many recently established, contested the election. Twenty-five years later, it is notable that this position was echoed in the 2018 election.

80. Although there were some complaints of opposition parties being obstructed or hampered during campaigning,[133] they were relatively minor and fewer than in past elections. This is consistent with the changed nature of this electoral campaign where the participation of small opposition parties was vital in making it a multi-party election, despite the inevitability of a CPP win.[134]

81. Polling took place on 29 July between 0700 and 1500. On 15 August, the NEC announced the results: official turnout was 83.02 per cent, and the CPP received 76.85 per cent of valid votes, while FUNCINPEC, LDP, and Khmer Will Party came second, third and fourth with 5.89, 4.86 and 3.35 per cent respectively.[135] Only two other parties received more than 1 per cent of the vote (KNUP, GDP). The other 14 parties received a combined vote of 6.39 per cent. Invalid ballots accounted for 8.55 per cent of total votes – approximately five times higher than the 2013 and 2017 elections. The CPP won all 125 seats at the National Assembly.

82. There were reliable complaints received from various people compelled to vote following threats or intimidation on polling day, including in Phnom Penh, Tbong Khmum, Kampong Cham and Ratanakkiri. These reports mentioned house visits and phone calls from village and commune officials who made threats ranging from facing difficulty in public services, being reported to commune authority, and to being considered opposition.

83. The Special Rapporteur also received some information of payments to vote following polling. According to these reports, villagers in Tbong Khmum, Kampong Cham and Ratanakkiri were paid 20,000 Riel (USD5) by village authorities – following voting on 29 and 30 July – if they could show ink on their fingers as proof that they had voted. There were also reports of commune/village officials checking fingers to identify those who had not voted. In Ratanakkiri it was claimed that soldiers and police in villages were checking to find those who had not voted. Some such reports were covered separately in the media.[136]

84. The Special Rapporteur received many reports that fingers of workers would be checked on their return to work, however, most such reports could not be corroborated. In one instance however, a Phnom Penh based company issued a letter on 26 July stating that any Cambodian employees found without ink on index finger would be deducted two-day wages from their salary.[137] After the letter was leaked on social media and drew online criticism, the company apologized for the statement made in error, and issued a clarification the next day stating that there would be no such deductions.

85. The Special Rapporteur has seen photographs that appear to show military and police personnel holding up their inked index fingers on parades on the day following the election. Two such photographs can be identified as the Military's 53 Brigade as well the

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[131] Beehive Social Democratic Party (0.45%), Grassroots Democracy Party (0.07%), Cambodian Youth Party (0.02%), Cambodia Indigenous People's Democracy Party (0.02%), Khmer Power Party (0.01%).

[132] Light of Khmer Party, Our Motherland, Khmer Rise party, Khmer United Party, Khmer Will Party, New Light Party.

[133] https://phnompenhpost.com/national/gdp-says-city-denying-it-billboard-placement.

[134] https://www.khmertimeskh.com/50503101/pm-tells-officials-to-facilitate-campaigns/.

[135] https://www.necelect.org.kh/khmer/content/3520.

[136] https://www.rfa.org/khmer/news/politics/authority-traces-people-did-not-go-to-vote-08012018070242.html.

[137] https://www.facebook.com/FreeTEPvanny/photos/pcb.1099544213529057/1099540516862760.

Battambang city police department. With respect to the latter, the Battambang city police chief Pang Heang told media that the policemen were neither intimidated to show their fingers nor forced to vote, but that they had proudly displayed their inked fingers.[138]

86. In a statement highlighting the successes of the election, the Ministry of Foreign Affairs noted the "peaceful and upbeat atmosphere" in which 20 parties campaigned over 21 days for an election with "genuine opposition".[139] According to the Ministry, the high turnout indicated the "strong confidence of the citizens in the electoral process". The statement also stressed the presence of 220 international observers, 80,000 political agents[140] and 80,000 others from national associations and organisations.[141]

VII. Conclusion and recommendations

87. National elections, until the 2018 elections, had been steadily improving in terms of compliance with international human rights standards and Cambodian laws, in spite of being marred by varying degrees of intimidation of voters, and attacks on political opponents. National elections in 2013 and local elections in 2017 raised some expectations that an opposition could gain government through peaceful elections as foreseen in any democracy. The 2018 elections represent a departure from previous trends due to the dissolution of the former main opposition party and the banning of a significant number of senior members of the former opposition from political activity for five years. This seriously calls into question the genuineness of these elections, as stipulated in article 25 of the International Covenant on Civil and Political Rights. The redistribution of seats from the former opposition to other parties, particularly at the commune level, raises very serious concerns about respect for the right to take part in the conduct of public affairs through freely chosen representatives as it has effectively disenfranchised a significant proportion of citizens, including in the Senate.

88. In parallel, the use of law to restrict debate and the targeting of media, political opponents, civil society organizations and individuals, including through the use of criminal charges, has shrunk the space for serious political debate, an essential factor for the enjoyment of the right to take part in the conduct of public affairs. Pluralistic political debate is an essential element in demonstrating genuine competition in any election. The Special Rapporteur highlights in particular reaction to calls for a boycott of the elections, which, in a non-compulsory election, is recognized by the Human Rights Committee as a permitted exercise of freedom of expression. The reports of threats to voters if they did not vote are of particular concern: the ink-stained finger, a sign in the past of hope and freedom, ironically has become a symbol of coercion.

89. The Special Rapporteur strongly encourages the expansion of democratic space so that civil society organizations, human rights defenders and political activists, including members of the former CNRP, can actively and openly participate in inclusive political debate. She therefore calls, in particular, for the unconditional release of Kem Sokha; the lifting of the ban on the 118 ex-CNRP senior members ; the alignment of laws and regulations such as LANGO, the Law on Political Parties, the lèse majesté provision and others with international standards; reform of the NEC to ensure and maintain its independence from politics; and the lifting of restrictive measures on the activities of civil society organizations such as the 2 October 2017 circular requiring prior notification for activities of civil society organizations. Such steps would also be consistent with the

[138] https://www.rfa.org/english/news/cambodia/democracy-08012018165625.html.

[139] https://www.mfaic.gov.kh/site/detail/19855.

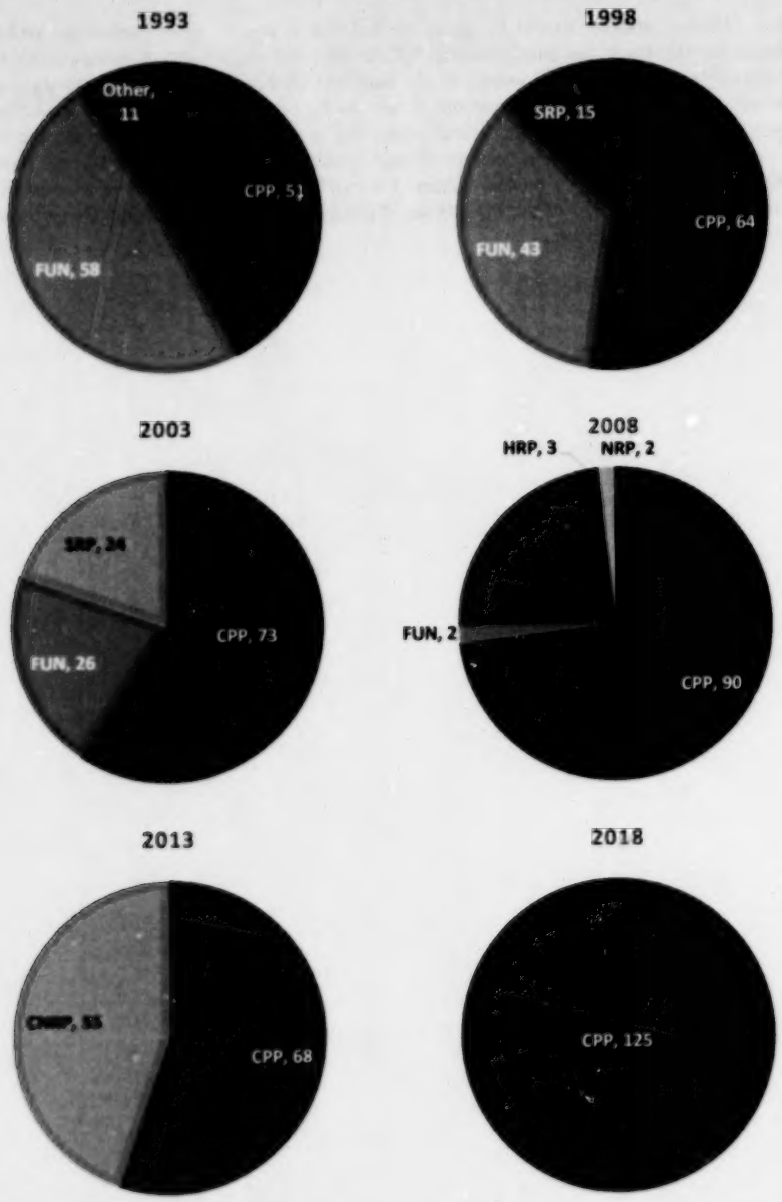
[140] Of these, nearly 46,000 were from the CPP. FUNCINPEC and LDP had agents in approximately half of the 22,967 polling stations, see https://www.necelect.org.kh/khmer/sites/default/files/images-attachment/Party-Agent_Registration_report.jpg.

[141] Nearly half of the observers are reported to be from the Union of Youth Federations of Cambodia, an organization headed by the Prime Minister's son, also a CPP Parliamentarian, https://www.reuters.com/article/us-cambodia-election-monitors/election-monitoring-groups-in-cambodia-headed-by-pms-son-ambassador-idUSKBN1KA0FS.

Cambodian authorities' commitment to Sustainable Development Goal 16, which will be reviewed at the High Level Political Forum in 2019.

90. Utmost priority should be given to building a culture where criticism, within reasonable bounds, is not only permitted but accepted and encouraged as indispensable to maintaining peace and development in the short and long term; where the separation of powers between organs of Government as well as the separation of State and the ruling party is respected and cherished; and where the possibility of a peaceful change of Government from one party to another through genuine elections is accepted as the norm rather than resisted by any means. Unless Cambodians and the international community strive for this, the vision of the Paris Peace Agreements and the Cambodian Constitution will remain a distant dream.

Graph 1: National Assembly seats won by political parties: 1993 to 2018



Key	
CNRP: Cambodia National Rescue Party	HRP: Human Rights Party
CPP: Cambodian People's Party	NRP: Norodom Ranariddh Party
FUN: FUNCINPEC Party	SRP: Sam Rainsy Party

Source: National Assembly Cambodia, http://www.national-assembly.org.kh/group-article/3.